

## **Testimony Senate Energy and Technology 5/25/16**

Mr. Chair and Committee Members,

Thank you for the opportunity to testify again. Unfortunately, I am not able to offer our support. The S-3 version does not fix our core concerns regarding maintaining a viable and sustainable choice market. Specifically, the provisions on resource adequacy and the capacity charge, constrain market dynamics such that choice opportunities will be limited.

I have included with my testimony today, suggested language to address some of the concerns.

### **Resource Adequacy**

Sec. 6w establishes an LCR requirement of 50% for LCR starting in Oct 2017, and then jumps to 90% in Oct 1. The language allows use of a three-year auction, if one has been created, and only if the commission determines the action would meet the LCR. We have a couple concerns. First, the automatic jump to the 90% requirement may not be warranted in meeting the LCR. Second, if the new 3-year forward MISO auction is not created, there will be no auction based mechanism available in the market place. The market place would be reduced to bilateral agreements; which FERC has indicated does not come with the same market protections as an auction dynamic. Third, if MISO creates an auction, we believe there should be no delay in access to that auction. If the commission determines later the need for further requirements, they can call for a contested case hearing.

We also want to echo the concerns about the timing and access to the auction.

Suggestion: We have supplied language that would actively request MISO to create a three-year auction, and outlines the details of that auction. In addition, we would suggest that the 90% requirement not kick in until the three-year auction is created. The MPSC could be empowered to set the 90% requirement if the LCR is threatened.

### **Capacity Charge**

We remain concerned that the capacity charge does not allow netting. When there is an equal amount of load returning as is leaving, then there is no cost imposed on the regulated system. In addition, the S-3 does not change the full capacity cost

amount or length of the charge of 10 years. As we have stated, we believe, the charge ought to be based on CONE and for a term of five years.

Suggestion:

- Amend page 96, line 3, after “subsequent”, by striking out “10” and inserting “5”
- Amend page 96, Line 18, after “the”, by striking out “10” and inserting “5”
- Amend Page 96, line 13, after “services”, by inserting not to exceed the cost of new entry”

Thank you for the opportunity share our thoughts. As always, we are willing to continue to work toward solutions.

SEC. 6W. (1) BY JUNE 2016, THE COMMISSION SHALL FORMALLY REQUEST THE MIDCONTINENT INDEPENDENT SYSTEM OPERATOR TO DEVELOP AND IMPLEMENT A RESOURCE ADEQUACY CONSTRUCT AND ASSOCIATED TARIFF TO RUN A CAPACITY AUCTION IN THIS STATE WITH INPUT FROM RELEVANT STAKEHOLDERS INCLUDING, BUT NOT LIMITED TO, RESOURCE SUPPLIERS, ELECTRIC UTILITIES, MUNICIPALLY OWNED UTILITIES, ALTERNATIVE ELECTRIC PROVIDERS, AND CUSTOMERS. THE REQUESTED IMPLEMENTATION DATE SHALL BE NO LATER THAN APRIL 2018.

(2) IF A CAPACITY AUCTION IN THIS STATE IS DEVELOPED BY THE END OF APRIL 2018, THEN ALL ELECTRIC PROVIDERS IN THIS STATE SHALL BE ABLE TO UTILITIZE THE MICHIGAN CAPACITY AUCTION TO MEET ANY CAPACITY REQUIREMENTS ESTABLISHED BY THE COMMISSION FOR THE ELECTRIC LOAD SERVED IN THE TERRITORY FOR WHICH THE CAPACITY AUCTION IS APPLICABLE.

(3) THE COMMISSION SHALL REQUEST THAT THE CAPACITY AUCTION IN THIS STATE MEETS THE FOLLOWING CRITERIA:

(A) THE CAPACITY AUCTION SETS A PRICE SIGNAL AT LEAST THREE YEARS OUT ON A ROLLING BASIS TO MEET THE LOCAL CLEARING REQUIREMENT AS DEFINED BY THE APPLICABLE INDEPENDENT SYSTEM OPERATOR.

(B) THE CAPACITY AUCTION WILL USE A DOWNWARD SLOPING DEMAND CURVE THAT REFLECTS THE RELIABILITY VALUE OF THE CAPACITY.

(C) THE CAPACITY AUCTION HAS RULES INTENDED TO LIMIT MARKET POWER. THESE WILL INCLUDE, BUT ARE NOT LIMITED TO THE FOLLOWING:

(i) A MUST-OFFER REQUIREMENT FOR ALL CAPACITY RESOURCES ELIGIBLE TO MEET THE LOCAL CLEARING REQUIREMENT IN THE APPLICABLE TERRITORY

(ii) CONDUCT THRESHOLD AND IMPACT THRESHOLD TESTS FOR ECONOMIC WITHHOLDING CONSISTENT WITH THOSE IN THE MIDCONTINENT INDEPENDENT SYSTEM OPERATOR PLANNING RESOURCE AUCTION IN PLACE ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED SECTION 6T.

(D) THE CAPACITY AUCTION SHALL NOT HAVE RULES THAT INCLUDE A MINIMUM OFFER PRICE REQUIREMENTS OR RESTRICTIONS ON THE USE OF FIXED RESOURCE ADEQUACY PLANS.

(E) EACH ELECTRIC PROVIDER HAS THE ABILITY TO UTILIZE A FIXED RESOURCE ADEQUACY PLAN IF IT OWNS OR HAS CONTRACTED FOR CAPACITY FOR A PORTION OR ALL OF THE DURATION COVERED BY THE CAPACITY AUCTION.

(F) ELECTRIC PROVIDERS ARE NOT CHARGED AND CAPACITY RESOURCES ARE NOT PAID UNTIL THE DELIVERY YEAR, AND THEN THE ELECTRIC PROVIDERS PAY FOR THEIR SHARE OF THE RESOURCES NEEDED TO SERVE THEIR SHARE OF THE LOAD DURING THAT PLANNING YEAR.

(G) AN INDEPENDENT MARKET MONITOR WILL BE HIRED TO OVERSEE THE PROCESS, MITIGATE MARKET POWER, AND PREVENT MARKET PARTICIPANTS FROM EXPLOITING THE MARKET TO THE DETRIMENT OF OTHER PARTICIPANTS.

(H) THE COST OF ADMINISTRATION OF THE CAPACITY AUCTION WILL BE RECOVERED FROM ELECTRIC PROVIDERS PURCHASING CAPACITY IN THE MICHIGAN CAPACITY AUCTION USING THE SAME COST ALLOCATION METHOD

THAT IS USED BY THE MIDCONTINENT INDEPENDENT SYSTEM OPERATOR TO RECOVER THE COST OF ITS EXISTING PLANNING RESOURCE AUCTION AS OF THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED SECTION 6T.

(I) THE CAPACITY PERFORMANCE REQUIREMENTS WILL BE NO GREATER THAN THE RESPECTIVE INDEPENDENT SYSTEM OPERATOR'S STANDARDS.

(J) THE INDEPENDENT SYSTEM OPERATOR WILL CONTINUE TO TAKE INTO ACCOUNT OUTAGE HISTORY AND GENERATOR TESTS OF RESOURCES.

(K) THE DOWNWARD SLOPING DEMAND CURVE USED FOR THE MICHIGAN CAPACITY AUCTION WILL INCLUDE A CAP ON THE AUCTION CLEARING PRICE THAT RESULT FROM THE AUCTION.

(L) ANY CAPACITY RESOURCE ELIGIBLE TO MEET THE LOCAL CLEARING REQUIREMENT AS DEFINED BY THE APPLICABLE INDEPENDENT SYSTEM OPERATOR WILL BE ABLE TO BID INTO THE AUCTION.

(M) THE LOCAL CLEARING REQUIREMENT SHALL BE CALCULATED BASED ON PHYSICAL TRANSMISSION LIMITATIONS IN A MANNER CONSISTENT WITH THE CURRENT APPROACH IN THE MIDCONTINENT INDEPENDENT SYSTEM OPERATOR'S PLANNING RESOURCE AUCTION AS OF THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED SECTION 6T.

(4) AN ELECTRIC UTILITY SHALL BY OCTOBER 1 OF EACH YEAR DEMONSTRATE TO THE COMMISSION, IN A FORMAT DETERMINED BY THE COMMISSION, THAT FOR THE PLANNING YEAR BEGINNING THE FOLLOWING JUNE 1 AND THE SUBSEQUENT PLANNING YEAR, THE ELECTRIC UTILITY OWNS OR HAS CONTRACTUAL RIGHTS TO SUFFICIENT DEDICATED AND FIRM ELECTRIC GENERATION CAPACITY TO MEET 90% OF ITS PROPORTIONAL SHARE OF THE LOCAL CLEARING REQUIREMENT AS DETERMINED BY THE COMMISSION UNDER SUBSECTION (7). THE ELECTRIC UTILITY MAY MEET THIS REQUIREMENT THROUGH ANY RESOURCE THAT THE APPROPRIATE INDEPENDENT SYSTEM OPERATOR ALLOWS TO QUALIFY FOR MEETING THE LOCAL CLEARING REQUIREMENT.

~~—— (2) ALTERNATIVE ELECTRIC SUPPLIER, COOPERATIVE ELECTRIC UTILITY, AND MUNICIPALLY OWNED ELECTRIC UTILITY SHALL BY OCTOBER 1 OF 2017 DEMONSTRATE TO THE COMMISSION, IN A FORMAT DETERMINED BY THE COMMISSION, THAT FOR THE PLANNING YEAR BEGINNING JUNE 1, 2018, THE ALTERNATIVE ELECTRIC SUPPLIER, COOPERATIVE ELECTRIC UTILITY, OR MUNICIPALLY OWNED ELECTRIC UTILITY OWNED ELECTRIC UTILITY OWNS OR HAS CONTRACTUAL RIGHTS TO SUFFICIENT DEDICATED AND FIRM ELECTRIC GENERATION CAPACITY TO MEET THE EQUIVALENT OF 50% OF ITS PROPORTIONAL SHARE OF THE LOCAL CLEARING REQUIREMENT AS ESTABLISHED BY THE COMMISSION UNDER SUBSECTION (8). THE ALTERNATIVE ELECTRIC SUPPLIER, COOPERATIVE ELECTRIC UTILITY, OR MUNICIPALLY OWNED ELECTRIC UTILITY MAY MEET THIS REQUIREMENT THROUGH OWNERSHIP OR CONTRACTUAL RIGHTS TO ANY RESOURCE THAT THE APPROPRIATE INDEPENDENT SYSTEM OPERATOR ALLOWS TO QUALIFY FOR MEETING THE LOCAL CLEARING REQUIREMENT.~~

(3) AN ALTERNATIVE ELECTRIC SUPPLIER, COOPERATIVE ELECTRIC UTILITY, AND MUNICIPALLY OWNED ELECTRIC UTILITY SHALL BY OCTOBER 1

OF 2018, AND EACH OCTOBER THEREAFTER, DEMONSTRATE TO THE COMMISSION, IN A FORMAT DETERMINED BY THE COMMISSION, THAT FOR THE PLANNING YEAR BEGINNING THE FOLLOWING JUNE 1 AND THE SUBSEQUENT PLANNING YEAR, THE ALTERNATIVE ELECTRIC SUPPLIER, COOPERATIVE ELECTRIC UTILITY, OR MUNICIPALLY OWNED ELECTRIC UTILITY OWNS OR HAS CONTRACTUAL RIGHTS TO SUFFICIENT DEDICATED AND FIRM ELECTRIC ~~GENERATION~~ CAPACITY TO MEET THE EQUIVALENT OF 90% OF ITS PROPORTIONAL SHARE OF THE LOCAL CLEARING REQUIREMENT AS ESTABLISHED BY THE COMMISSION UNDER SUBSECTION (8). THE ALTERNATIVE ELECTRIC SUPPLIER, COOPERATIVE ELECTRIC UTILITY, OR MUNICIPALLY OWNED ELECTRIC UTILITY MAY MEET THIS 90% REQUIREMENT THROUGH ANY RESOURCE THAT THE APPROPRIATE INDEPENDENT SYSTEM OPERATOR ALLOWS TO QUALIFY FOR MEETING THE LOCAL CLEARING REQUIREMENT. THE 90% REQUIREMENT OF THIS SUBSECTION MAY BE MET BY A THREE-YEAR CAPACITY AUCTION ESTABLISHED AND CONDUCTED BY THE APPROPRIATE SYSTEM OPERATOR PROVIDED THAT THE COMMISSION HAS DETERMINED THROUGH A CONTESTED CASE PROCEEDING THAT THE THREE-YEAR AUCTION IS DESIGNED TO MEET AT LEAST THE LOCAL CLEARING REQUIREMENT FOR THE APPLICABLE ZONE. ~~CAPACITY FROM SUCH THREE-YEAR CAPACITY AUCTION SATISFIES THE APPLICABLE ZONE'S LOCAL CLEARING REQUIREMENT.~~

(4) NOTWITHSTANDING THE PROVISIONS OF SUBSECTIONS (1), (2), AND (3) OF THIS SECTION, A PROVIDER'S PAYMENT OF THE COST OF NEW ENTRY AS PART OF AN AUCTION CONDUCTED BY THE APPROPRIATE INDEPENDENT SYSTEM OPERATOR SHALL NOT BY ITSELF SATISFY THE RESOURCE ADEQUACY REQUIREMENTS OF THIS SECTION. IN ADDITION, IF THE APPROPRIATE INDEPENDENT SYSTEM OPERATOR DETERMINES THROUGH ITS RESOURCE ADEQUACY CONSTRUCT, FOR ANY PLANNING YEAR, COMMENCING THE PLANNING YEAR BEGINNING JUNE 1, 2018, THAT THE APPLICABLE RESOURCE ZONE DOES NOT MEET THE LOCAL CLEARING REQUIREMENT, ALL ELECTRIC PROVIDERS IN THAT RESOURCE ZONE MUST MEET 100% OF THEIR PROPORTIONAL SHARE OF THE LOCAL CLEARING REQUIREMENT FOR THE NEXT 3 PLANNING YEARS THROUGH OWNERSHIP OR CONTRACTUAL RIGHTS TO ANY RESOURCE THAT THE APPROPRIATE INDEPENDENT SYSTEM OPERATOR ALLOWS TO QUALIFY FOR MEETING THE LOCAL CLEARING REQUIREMENT.

———(5) ONE OR MORE MUNICIPALLY OWNED ELECTRIC UTILITIES MAY AGGREGATE THEIR ~~GENERATION~~ CAPACITY RESOURCES THAT ARE LOCATED IN THE SAME LOCAL RESOURCE ZONE TO MEET THE REQUIREMENTS OF SUBSECTIONS (2) ~~AND (3)~~(4). ONE OR MORE COOPERATIVE ELECTRIC UTILITIES MAY AGGREGATE THEIR ~~GENERATION~~ CAPACITY RESOURCES THAT ARE LOCATED IN THE SAME LOCAL RESOURCE ZONE TO MEET THE REQUIREMENTS OF SUBSECTIONS (2) ~~AND (3)~~(4).

(6) AFTER RECEIVING A SUBMISSION FROM AN ALTERNATIVE ELECTRIC SUPPLIER UNDER SUBSECTION (2) ~~OR (3)~~(4), THE COMMISSION SHALL DETERMINE AND NOTIFY IN WRITING EACH ALTERNATIVE ELECTRIC SUPPLIER WHETHER THE ALTERNATIVE ELECTRIC SUPPLIER HAS DEMONSTRATED THAT IT CAN MEET THE CAPACITY REQUIREMENTS OF SUBSECTIONS (2) ~~AND (3)~~(4). IF THE

COMMISSION DETERMINES THAT AN ALTERNATIVE ELECTRIC SUPPLIER HAS FAILED TO DEMONSTRATE THAT IT CAN MEET ANY OF THE REQUIREMENTS OF SUBSECTION (2) OR (3), THE COMMISSION SHALL COMMENCE A SHOW CAUSE PROCEEDING TO DETERMINE WHETHER THE ALTERNATIVE ELECTRIC SUPPLIER SHOULD BE LIMITED TO PROVIDING THE AMOUNT OF CAPACITY THE ALTERNATIVE ELECTRIC SUPPLIER HAS DEMONSTRATED IT HAS TO MEET THE REQUIREMENTS OF SUBSECTIONS ~~(2) AND (3)~~(4). THE COMMISSION SHALL COMPLETE A SHOW CAUSE PROCEEDING UNDER THIS SUBSECTION NOT LATER THAN APRIL 1 OF THE FOLLOWING YEAR. IF AN ALTERNATIVE ELECTRIC SUPPLIER FAILS TO REMEDY THE DEFICIENCY IDENTIFIED BY THE COMMISSION OR FAILS TO OTHERWISE DEMONSTRATE THAT IT HAS SUFFICIENT CAPACITY, THE COMMISSION SHALL LIMIT THE ELECTRICITY THE ALTERNATIVE ELECTRIC SUPPLIER CAN PROVIDE TO AN AMOUNT THAT DOES NOT EXCEED THE ~~PROPORTION OF THEIR REQUIREMENTS IN SUBSECTIONS AND (4) AMOUNT OF CAPACITY~~ THAT THE SUPPLIER HAS DEMONSTRATED IT HAS TO MEET THE ~~REQUIREMENTS OF SUBSECTIONS (2) AND (3)~~ FOR THE PLANNING YEARS UNDER REVIEW. ALL CONTRACTS FOR SERVICE BETWEEN A CUSTOMER IN THIS STATE AND AN ALTERNATIVE ELECTRIC SUPPLIER ENTERED INTO AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION SHALL INCLUDE A PROVISION ALLOWING THE CUSTOMER TO WITHDRAW FROM THE CONTRACT WITHOUT PENALTY IF THE COMMISSION ORDERS A LIMITATION OF CAPACITY UNDER THIS SUBDIVISION THAT RESULTS IN THE ALTERNATIVE ELECTRIC SUPPLIER BEING UNABLE TO SUPPLY THE CUSTOMER WITH THE CAPACITY REQUIRED UNDER SUBSECTIONS (2) AND (3) AT ANY TIME DURING THE PLANNING YEARS UNDER REVIEW. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, AN ALTERNATIVE ELECTRIC SUPPLIER SHALL NOT SERVE MORE LOAD DURING THE PLANNING YEARS UNDER REVIEW THAN THE LOAD SUPPORTED BY THE CAPACITY DEMONSTRATED UNDER SUBSECTIONS (2) AND (3). THE SHOW CAUSE PROCEEDING UNDER THIS SUBSECTION SHALL BE CONDUCTED AS A CONTESTED CASE PURSUANT TO CHAPTERS 4 AND 5 OF THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.271 TO 24.292.

(7) NOT LATER THAN JULY 1 OF EACH YEAR, THE COMMISSION SHALL REPORT TO THE GOVERNOR AND LEGISLATURE A FORECAST OF THE CAPACITY RESOURCE ADEQUACY FOR A PERIOD OF NOT LESS THAN 5 YEARS. THE REPORT REQUIRED UNDER THIS SUBSECTION SHALL INCLUDE, FOR THE PLANNING YEARS COVERED UNDER SUBSECTIONS (1), (2), AND (3), A DETERMINATION BY THE COMMISSION OF THE LOCAL CLEARING REQUIREMENT FOR EACH LOCAL RESOURCE ZONE, AND PROPORTIONAL SHARE OF THE LOCAL CLEARING REQUIREMENTS FOR EACH ELECTRIC PROVIDER IN THE STATE. IN MAKING A DETERMINATION UNDER THIS SUBSECTION, THE COMMISSION SHALL CONSULT WITH AND CONSIDER ANY FINDINGS, PROJECTIONS, AND OTHER DATA OF THE APPROPRIATE INDEPENDENT SYSTEM OPERATOR. THE COMMISSION SHALL SPECIFICALLY DETERMINE WHETHER 100% OF THE CAPACITY RESOURCES NEEDED TO MEET THE LOCAL CLEARING REQUIREMENT FOR EACH LOCAL RESOURCE ZONE IS FORECASTED TO BE MET FOR EACH YEAR IN THE 5-YEAR FORECASTED PERIOD. A DETERMINATION BY THE COMMISSION UNDER THIS

SUBSECTION SHALL BE CONDUCTED AS A CONTESTED CASE PURSUANT TO CHAPTERS 4 AND 5 OF THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.271 TO 24.292. IN A FORMAT DETERMINED BY THE COMMISSION, ALL ELECTRIC PROVIDERS AND UNREGULATED GENERATION PROVIDERS IN THIS STATE SHALL SUBMIT PRESCRIBED DATA NECESSARY FOR THE COMMISSION TO MAKE THE FORECAST AND DETERMINATIONS REQUIRED UNDER THIS SUBSECTION.

(8) THE ATTORNEY GENERAL OR ANY CUSTOMER OF A MUNICIPALLY OWNED ELECTRIC UTILITY OR COOPERATIVE ELECTRIC UTILITY MAY COMMENCE A CIVIL ACTION FOR INJUNCTIVE RELIEF AGAINST THAT MUNICIPALLY OWNED ELECTRIC UTILITY OR COOPERATIVE ELECTRIC UTILITY IF THE MUNICIPALLY OWNED ELECTRIC UTILITY OR COOPERATIVE ELECTRIC UTILITY FAILS TO MEET THE APPLICABLE REQUIREMENTS OF SUBSECTIONS (1) TO (7). THE ATTORNEY GENERAL OR CUSTOMER SHALL COMMENCE AN ACTION UNDER THIS SUBSECTION IN THE CIRCUIT COURT FOR THE CIRCUIT IN WHICH THE PRINCIPAL OFFICE OF THE MUNICIPALLY OWNED ELECTRIC UTILITY OR COOPERATIVE ELECTRIC UTILITY IS LOCATED. THE ATTORNEY GENERAL OR CUSTOMER SHALL NOT FILE AN ACTION UNDER THIS SUBSECTION UNLESS THE ATTORNEY GENERAL OR CUSTOMER HAS GIVEN THE MUNICIPALLY OWNED ELECTRIC UTILITY OR COOPERATIVE ELECTRIC UTILITY AT LEAST 60 DAYS' WRITTEN NOTICE OF THE INTENT TO SUE, THE BASIS FOR THE SUIT, AND THE RELIEF SOUGHT. WITHIN 30 DAYS AFTER THE MUNICIPALLY OWNED ELECTRIC UTILITY OR COOPERATIVE ELECTRIC UTILITY RECEIVES WRITTEN NOTICE OF THE INTENT TO SUE, THE MUNICIPALLY OWNED ELECTRIC UTILITY OR COOPERATIVE ELECTRIC UTILITY AND THE ATTORNEY GENERAL OR CUSTOMER SHALL MEET AND MAKE A GOOD-FAITH ATTEMPT TO DETERMINE IF THERE IS A CREDIBLE BASIS FOR THE ACTION. THE MUNICIPALLY OWNED ELECTRIC UTILITY OR COOPERATIVE ELECTRIC UTILITY SHALL TAKE ALL REASONABLE AND PRUDENT STEPS NECESSARY TO COMPLY WITH THE APPLICABLE REQUIREMENTS OF SUBSECTIONS (1) TO (7) WITHIN 90 DAYS AFTER THE MEETING IF THERE IS A CREDIBLE BASIS FOR THE ACTION. IF THE PARTIES DO NOT AGREE AS TO WHETHER THERE IS A CREDIBLE BASIS FOR THE ACTION, THE ATTORNEY GENERAL OR CUSTOMER MAY PROCEED TO FILE THE SUIT.

(9) THE COMMISSION SHALL MONITOR WHETHER ANY ENTITY HAS ENGAGED IN MARKET MANIPULATIONS RELATED TO THE LOCAL CLEARING REQUIREMENTS OF THIS SECTION. AN ALTERNATIVE ELECTRIC SUPPLIER OR A CUSTOMER OF AN ALTERNATIVE ELECTRIC SUPPLIER MAY FILE A COMPLAINT WITH THE COMMISSION IF THE ALTERNATIVE ELECTRIC SUPPLIER OR CUSTOMER BELIEVES THAT AVAILABLE CAPACITY HAS BEEN UNREASONABLY WITHHELD FROM THE LOCAL CLEARING REQUIREMENTS OF THIS SECTION BEING OFFERED FOR SALE, EITHER PHYSICALLY OR ECONOMICALLY, BY AN ELECTRIC UTILITY OR AN UNREGULATED GENERATION PROVIDER BASED IN THIS STATE. IF THE COMMISSION FINDS EVIDENCE THAT ANY AVAILABLE CAPACITY WAS UNREASONABLY WITHHELD BY AN UNREGULATED GENERATION PROVIDER BASED IN THIS STATE, THE COMMISSION SHALL IMMEDIATELY FORWARD THAT EVIDENCE TO THE STATE ATTORNEY GENERAL AND APPROPRIATE FEDERAL



AUTHORITIES FOR ENFORCEMENT. IF THE COMMISSION DETERMINES AFTER NOTICE AND HEARING THAT AN ELECTRIC UTILITY HAS UNREASONABLY WITHHELD EXCESS CAPACITY, IT MAY DISALLOW COST RECOVERY FOR THE UTILITY-OWNED CAPACITY THAT WAS IN EXCESS OF THE UTILITY'S CAPACITY REQUIREMENTS UNDER THIS SECTION.

(10) AS USED IN THIS SECTION:

(A) "DEDICATED AND FIRM ELECTRIC ~~GENERATION~~ CAPACITY" MEANS CAPACITY THAT IS OWNED OR UNDER CONTRACT BY THE ELECTRIC PROVIDER THAT IS ELIGIBLE TO BE USED TO SATISFY THE REQUIREMENTS OF THE APPROPRIATE INDEPENDENT SYSTEM OPERATOR FOR THE LOCAL RESOURCE ZONE IN WHICH THE ELECTRIC PROVIDER'S DEMAND IS SERVED AND THE REQUIREMENT DETERMINED BY THE COMMISSION UNDER SUBSECTION (7).

(B) "ELECTRIC PROVIDER" MEANS ANY OF THE FOLLOWING:

(i) ANY PERSON OR ENTITY THAT IS REGULATED BY THE COMMISSION FOR THE PURPOSE OF SELLING ELECTRICITY TO RETAIL CUSTOMERS IN THIS STATE.

(ii) A MUNICIPALLY OWNED ELECTRIC UTILITY IN THIS STATE.

(iii) A COOPERATIVE ELECTRIC UTILITY IN THIS STATE.

(iv) AN ALTERNATIVE ELECTRIC SUPPLIER LICENSED UNDER SECTION

10A.

(C) "LOCAL CLEARING REQUIREMENT" MEANS THE AMOUNT OF CAPACITY RESOURCES ~~THAT MUST BE PHYSICALLY PRESENT IN THE LOCAL RESOURCE ZONE IN WHICH THE ELECTRIC PROVIDER'S DEMAND IS SERVED~~ NEEDED TO ENSURE RELIABILITY IN THAT ZONE AS REQUIRED BY THE APPROPRIATE INDEPENDENT SYSTEM OPERATOR FOR THE LOCAL RESOURCE ZONE IN WHICH THE ELECTRIC PROVIDER'S DEMAND IS SERVED ~~AND THE COMMISSION UNDER SUBSECTION (7).~~

(D) "PLANNING YEAR" MEANS ~~JUNE 1 THROUGH THE FOLLOWING MAY 31 OF EACH YEAR~~ THE PLANNING YEAR AS DEFINED BY THE APPLICABLE INDEPENDENT SYSTEM OPERATOR.

(E) "PROPORTIONAL SHARE OF THE LOCAL CLEARING REQUIREMENT" MEANS THE MINIMUM AMOUNT OF CAPACITY AN ELECTRIC PROVIDER MUST OWN OR HAVE CONTRACTUAL RIGHTS TO THAT EQUALS THE PROVIDER'S PERCENTAGE SHARE OF THE CAPACITY REQUIREMENT FOR THE LOCAL RESOURCE ZONE IN WHICH THE PROVIDER'S DEMAND IS SERVED. THE PERCENTAGE SHARE OF THE CAPACITY REQUIREMENT SHALL BE DETERMINED BASED ON THE TOTAL AMOUNT COINCIDENT PEAK ~~OF~~ ELECTRIC DEMAND SERVED BY THE PROVIDER AS A PERCENTAGE OF THE TOTAL COINCIDENT PEAK ELECTRIC DEMAND OF ALL PROVIDERS IN THE LOCAL RESOURCE ZONE ~~AT THE TIME THE DETERMINATION IS MADE.~~